

KEVIN THOMPSON, on behalf of himself
and all others similarly situated,

Plaintiff,

V.

LOVE'S TRAVEL STOPS & COUNTRY
STORES, INC.,

Defendant.

Case No. 3:16-cv-00143-PLR

DEFENDANT’S MOTION TO DISMISS

Defendant Love’s Travel Stops & Country Stores, Inc. (“Love’s”) respectfully moves the Court to dismiss Plaintiff Kevin Thompson’s Complaint, in its entirety, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). As grounds for dismissal, Defendant would show:

1. The Court should dismiss the Complaint because Thompson fails to allege facts to support any of the required elements of Article III standing;
2. The Complaint fails to state a claim upon which relief can be granted, in that:
 - (a) Thompson has not alleged the existence of any recoverable damages;
 - (b) Thompson has failed to plead a claim under which he or any class he purports to represent can recover under the Tennessee Consumer Protection Act or any other state consumer protection statute;
 - (c) There was no mutual assent to the terms of Thompson's alleged implied-in-fact contract;
 - (d) Plaintiff's claim for breach of implied-in-law contract fails because there was no unjust retention of any benefit; and

- (e) Thompson's claim for fraudulent concealment fails because Love's did not owe a duty to disclose the credit card hold to Thompson and the alleged non-disclosure did not cause injury to Thompson.

The grounds for this Motion are set forth more specifically and in more detail in the Memorandum of Law which is filed contemporaneously herewith and which is incorporated herein.

Respectfully submitted,

**WOOLF, MCCLANE, BRIGHT, ALLEN &
CARPENTER, PLLC**

By: /s/ W. Kyle Carpenter

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*Attorneys for Defendant Love's Travel Stops &
Country Stores, Inc.*

NOTICE OF CERTIFICATION OF CONFERRAL

I hereby certify that on May 10, 2016, the parties to the above-captioned action met and conferred pursuant to the Court's May 9, 2016 Order (Dkt. 9) to discuss whether Defendant's Motion to Dismiss could be avoided by way of an amended pleading. The parties have been unable to agree that the deficiencies in the Complaint are curable by permissible amendment.

By: /s/ W. Kyle Carpenter

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2016, a copy of the foregoing **DEFENDANT'S MOTION TO DISMISS** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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